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5 IN THE UNITED STATES DISTRICT COURT
6
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 TERRI J. VITT,

No. 06-7184

9 Plaintiff,

10 ORDER REGARDING
11 DEFENDANT'S
12 MOTION TO DISMISS

v.

11 MICHAEL J. ASTRUE,
12 Commissioner of Social Security,

13 Defendant.

14 _____ /
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16 Defendant Michael J. Astrue, in his capacity as Commissioner
17 of the Social Security Administration (Commissioner),¹ moves to
18 dismiss Plaintiff's complaint pursuant to Federal Rule of Civil
19 Procedure 12(b)(6) on the ground that it is untimely. On June 18,
20 2007, Plaintiff filed an amended complaint addressing the
21 untimeliness issue raised in Defendant's motion.

22 Because Plaintiff has filed an amended complaint, Defendant's
23 motion may be moot. Defendant, therefore, must inform the Court
24 whether he wishes to stand on his present motion to dismiss, to

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27 ¹On February 1, 2007, Michael J. Astrue was confirmed as
28 Commissioner for the Social Security Administration, and is
therefore substituted for JoAnne B. Barnhart as the named defendant
in this action. Fed. R. Civ. P. 25(d)(1).

1 withdraw this motion and file another motion to dismiss, or to
2 withdraw the motion to dismiss and proceed on the merits of the
3 case. Defendant must inform the Court of how he wishes to proceed
4 within one week from the date of this order.

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7 Dated: 6/29/07

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Claudia Wilken

CLAUDIA WILKEN
United States District Judge

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